

ORDINANCE NO. 10-52

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA CONSENTING TO A SUBLEASE OR SITE LICENSE AGREEMENT BETWEEN T-MOBILE SOUTH LLC AND CLEAR WIRELESS LLC TO ALLOW CLEAR WIRELESS LLC TO CO-LOCATE ITS WIRELESS COMMUNICATIONS FACILITY WITH T-MOBILE SOUTH LLC ON THE MONOPOLE COMMUNICATIONS TOWER LOCATED AT BRIGHT PARK, 750 EAST 35 STREET, HIALEAH, FLORIDA, AND FURTHER AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A CO-LOCATION WIRELESS COMMUNICATIONS FACILITY LEASE AGREEMENT WITH CLEAR WIRELESS LLC, A NEVADA LIMITED LIABILITY COMPANY, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; FOR AN ANNUAL RENTAL FEE OF \$7,650.00, WHICH REPRESENTS 50% OF THE AMOUNT OF THE RENT DUE T-MOBILE SOUTH LLC, UNDER ITS LEASE WITH CLEAR WIRELESS; DURING ITS INITIAL TERM AND 50% OF THE AMOUNT OF THE RENT DUE T-MOBILE SOUTH LLC THEREAFTER PLUS A \$6,000 CONSENT FEE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Hialeah, Fla., Ordinance 05-74 (Aug. 24, 2005), the City and Omnipoint Holdings, Inc., a Delaware corporation, a predecessor in interest to T-Mobile South LLC, entered into that certain lease agreement dated October 7, 2005, subject to two five-year renewals, and as same be further amended from time to time, (collectively the "Ground Lease" or "Prime Lease"); whereby leased a portion of the property located at Bright Park for the purpose of constructing, operating and maintaining a communications facility and uses incidental thereto, including a 100-foot monopole and all necessary connecting appurtenances; and

WHEREAS, Clear Wireless desires to sublease from T-Mobile South LLC both ground space and tower space to install, maintain and operate Clear Wireless' communications facility on the Bright Park communications tower; and

WHEREAS, City desires to consent to Site License Agreement ("SLA") between T-Mobile South LLC and Clear Wireless; and

WHEREAS, Clear Wireless desires to enter into a lease agreement with the City to permit the co-location with T-Mobile South LLC on the Bright Park communications tower and the City likewise agrees to enter into a lease in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby consents to a sublease or Site License Agreement between T-Mobile South LLC and Clear Wireless LLC to allow Clear Wireless LLC to co-locate its wireless communications facility with T-Mobile South LLC on the monopole communications tower located at Bright Park, 750 East 35 Street, Hialeah, Florida, and further authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a Co-Location Wireless Communications Facility Lease Agreement with Clear Wireless LLC, a Nevada limited liability company, a copy of which is attached hereto and made a part hereof as Exhibit "1", for an annual rental fee of \$7,650.00, which represents 50% of the amount of the rental fee due T-Mobile South LLC under its lease with Clear Wireless, during its initial term and 50% of the amount of the rent due T-Mobile South LLC thereafter plus a \$6,000 consent fee. The location and landscaping of the wireless communications facility is subject to site plan review.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed with a civil penalty not to exceed

\$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

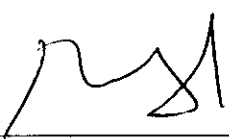
PASSED and ADOPTED this 14th day of September, 2010.

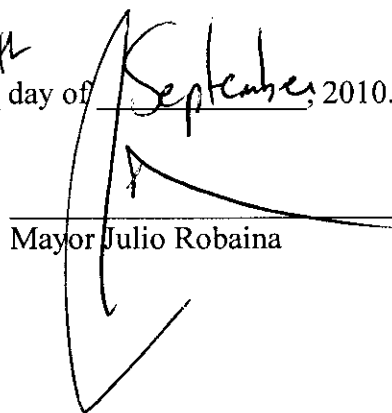
THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Carlos Hernandez
Council President

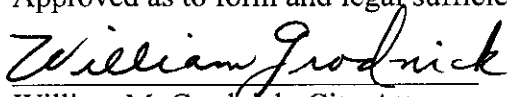
Attest:

Approved on this 15th day of September, 2010.


Rafael E. Granado, City Clerk


Mayor Julio Robaina

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

Ordinance was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Hernandez and Yedra voting "Yes", Councilmember Gonzalez absent.

CO-LOCATION WIRELESS COMMUNICATIONS
FACILITY LEASE AGREEMENT

This Consent Agreement ("Agreement") is made and entered into this ____ day of _____, 2010 by and between the City of Hialeah, a municipal corporation of the State of Florida ("Owner" or "City"), and Clear Wireless, LLC, a Nevada limited liability company, its successors or assigns ("Clear Wireless").

RECITALS

WHEREAS, City is the owner of certain real property located within Bright Park, together with ingress and egress, located at 750 East 35 Street, Hialeah, Florida and legally described on Exhibit "A" attached hereto (the "Property").

WHEREAS, pursuant to Hialeah, Fla., Ordinance 05-74 (Aug. 24, 2005), the City and Omnipoint Holdings, Inc., a Delaware corporation, a predecessor in interest to T-Mobile South LLC, entered into that certain lease agreement dated October 7, 2005), with two five-year renewals, and as same be further amended from time to time, (collectively the "Ground Lease" or "Prime Lease"); whereby leased a portion of the property located at Bright Park for the purpose of constructing, operating and maintaining a communications facility and uses incidental thereto, including a 100-foot monopole and all necessary connecting appurtenances. A copy of the Prime Lease is attached hereto as Exhibit "B" and is incorporated herein and made a part hereof by this reference; and

WHEREAS, Clear Wireless desires to sublease from T-Mobile South LLC both ground space and tower space to install, maintain and operate Clear Wireless' communications facility.

WHEREAS, Section 8 of the Prime Lease, requires any tenant co-locating on T-Mobile South LLC's communications tower to enter into a Lease Agreement with the City.

WHEREAS, Clear Wireless desires to enter into a Lease Agreement with the City to permit the co-location of the Clear Wireless' communications facility within the Property.

WHEREAS, City desires to consent to Site License Agreement ("SLA") between T-Mobile South LLC and Clear Wireless subject to the terms and conditions hereinafter set forth, subject to approval by the City Council of the City of Hialeah, Florida;

NOW, THEREFORE, for and in consideration of the amounts enumerated below, the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Clear Wireless hereby agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.

2. City consents to (a) T-Mobile South LLC and Clear Wireless entering into the Site License Agreement as same may be amended from time to time, (collectively the "Sublease"), whereby Clear Wireless shall sublease from T-Mobile South LLC both ground space and tower space for the installation, maintenance and operation of T-Mobile South LLC's communications facility ("Permitted Purpose") and (b) hereby agrees to enter into a Lease Agreement with Clear Wireless. In consideration of City's consent and this Lease of the property, within thirty (30) days after the date this Agreement is executed by both parties, Clear Wireless agrees to make a one-time payment to City in an amount equal to Six Thousand and 00/100 Dollars (\$6,000.00) (the "Consent Fee") and to pay rent to the City in an amount equal to Seven Thousand Six Hundred Fifty and 00/100 Dollars (\$7,650.00) for each year during the initial term (the "Rental Fee"), which represents an amount equal to fifty per cent (50%) of the total amount due to T-Mobile South LLC, payable in equal monthly installments on the first day of the month in advance ("Rental Fee"). In no event shall such rental fee be less than 50% of the amount of Section 8 of the Site License Agreement for the initial term or less than 50% of the amount established for subsequent or renewal terms of the Site License Agreement and incorporated herein. The rental fee herein shall be adjusted as the rental fee is adjusted in the Site License Agreement or in any amendments or renewals thereto. Any amounts due to the City shall take priority and be paid first before any amounts due to T-Mobile South LLC or any other entity.

3. Term. The parties agree that this Agreement shall commence upon execution by the Mayor of the City of Hialeah, after City Council approval, and shall terminate as of the expiration date or earlier termination date of the Ground Lease, Site License Agreement or Termination clause of this Agreement, whichever occurs first.

4. The City covenants that it is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the parties hereto.

5. Use. City hereby grants to Clear Wireless the privilege to use that portion of the Property shown on Exhibit "C" attached hereto ("Authorized Area") for the purpose of installing, constructing, operating and maintaining thereon the "Communications Facility" (as defined herein below) subject, however, to the terms and provisions of this Agreement. Clear Wireless' use shall be non-exclusive and subject to the Ground Lease and the SLA agreement between T-Mobile South LLC and Clear Wireless. "Communications Facility" is defined to include Clear Wireless' antenna(s) to be installed on T-Mobile South LLC's Tower and all of Clear Wireless' ground equipment to be installed on T-Mobile South LLC's leased premises, provided however that Clear Wireless obtains approval for the communications facility from the City pursuant to the City Code. It is understood that Clear Wireless shall not use the Property for any purpose other than the Permitted Purpose, and that the City retains the right to enter into additional non-exclusive Agreements with other communications providers to the Property, and further, reserves the right to use the Tower and Property for its own communications purposes, provided however, any further uses of the Tower and the Property by persons or entities other than the City shall not interfere with Clear Wireless' use of same. City hereby further authorizes Clear Wireless, its successors and assigns for the Term, non-exclusive use of the Property in the location shown on Exhibit "C", or

such other location as agreed to in writing between the parties, for pedestrian and vehicular ingress and egress to the Property and for the installation, operation and maintenance of utilities servicing the facilities installed upon the Authorized Area, provided that Clear Wireless' access to the Property shall not disturb the City's use of the Property. Clear Wireless shall have a right of access, twenty-four (24) hours a day, seven (7) days a week, to its equipment and antennas, and shall have the right to run cables and wires under, over, and across the Property, as directed by the City, to connect Clear Wireless equipment on the Tower to its equipment on the ground, and to its system. Clear Wireless shall provide the City notice when it wishes to access its Communications Facility to change electric service, change the panel, or change the power distribution within or to the panel, and shall coordinate such access and work as reasonably directed by the City. Clear Wireless recognizes that its rights to use the Property are non-exclusive and that the City's public safety communications system and other communications systems may be located on the Tower.

6. Clear Wireless shall also pay when due all electric, water, sewer, gas, fuel and other utilities fees which are needed to serve the Communications Facility and in addition, shall pay if applicable, when due all other taxes, and other governmental exactions on the communications service or Communications Facility as are lawfully imposed.

7. Improvements; Utilities; Access.

a. Clear Wireless shall have the right to install, maintain and operate within the Property such utilities (including, without limitation, electricity and telephone) necessary to serve the Communications Facility. The City shall have the exclusive discretion to approve or not approve the proposed location of all cables, wires, conduits, communications machinery, and other communications equipment and communications appurtenances which are installed in, over, under, or upon the Property. The parties recognize that Clear Wireless may be required by the City to install underground its lines and conduits around structures or under vacant or paved areas, but not under buildings, and such routing shall not be considered as frustrating the intent and purpose of this Agreement. Clear Wireless' equipment shall be installed in strict compliance with all applicable laws, ordinances and regulations.

b. Clear Wireless, at its expense, shall keep and maintain the Property and Clear Wireless' Communications Facility in good condition and repair during the Term of this Agreement. The City shall have the right to grant other entities non-exclusive use of the Tower and Property for wireless communications providers or for governmental purposes. Clear Wireless acknowledges its willingness to permit co-use of the Tower and Property for these purposes.

8. Termination.

This Agreement may be terminated, without any penalty or further liability, effective after the various notice periods described hereafter expire, as follows:

a. by City, if Clear Wireless fails to cure a default for payment of amounts due under this Agreement within thirty (30) days after Clear Wireless' receipt of written notice of default from City;

b. by City, if Clear Wireless fails to comply with the interference or co-use requirements as required by the City, and same is not cured within fifteen (15) days of written notice from City to Clear Wireless;

c. by City, on sixty (60) days written notice if Clear Wireless has abandoned the Communications Facility or Tower, provided that Clear Wireless shall have the opportunity to cure any claimed abandonment within such sixty (60) day period and thereby avoid termination. Abandonment shall be presumed if the Communications Facility is damaged and is not repaired for a ninety (90) day period, or if such facilities are not periodically maintained consistent with the customary and usual maintenance practices for such equipment in the industry;

d. by Clear Wireless, on sixty (60) days prior written notice, if it is unable to obtain, maintain or otherwise forfeits any license, permit or other governmental approvals necessary for the construction or operation of the Communications Facility or Clear Wireless' actual or intended use of the Authorized Area; or

e. by Clear Wireless, on sixty (60) days prior written notice, if Clear Wireless determines, in its reasonable discretion exercised in good faith, that based on (i) technology, (ii) interference with use of the Authorized Area resulting from the acts of any third party, an act of God or from other natural forces, (iii) changes in system design or system usage patterns; or, (iv) discovery of any matter of title or use restriction which creates a significant and immediate risk of preventing the continued use of the Authorized Area for the Permitted Purpose, Clear Wireless' use of the Communications Facility is no longer consistent with the reasonable operation of Clear Wireless' communications system; or,

f. By either party, if the other party defaults and fails to cure such default within thirty (30) days after written notice of such default is received by the defaulting party from the non-defaulting party; provided, however, that if such default is capable of being cured, but not within such 30 day period, this Agreement may not be terminated so long as the defaulting party commences appropriate curative action within such thirty (30) day period and thereafter diligently prosecutes such cure to completion as promptly as possible.

g. Upon termination of the agreement between Clear Wireless and T-Mobile South LLC. In the event Clear Wireless terminates this Agreement pursuant to this paragraph, Clear Wireless shall be excused from paying any further Consent Fee or Rental Fees after the later of the termination's effective date or the removal of all Clear Wireless facilities from the property.

9. Indemnity and Hold Harmless. Except for any claims, costs, losses or damages or causes of action arising from or due to the gross negligence or willful misconduct of City, Clear Wireless shall indemnify and hold harmless the City, and its elected officials, appointed officials, agents, subcontractors, assignees, and employees, from and against any and all claims, costs, losses, and damages, including but not limited to all fees and charges of engineers, attorneys, and

other professionals, and all court or other dispute resolution costs, liabilities, expenditures, or causes of action of any kind arising from, or relative to, this Agreement, the acts or omissions of Clear Wireless or its employees, or any of Clear Wireless' contractors or agents, including negligent, reckless, willful, or intentional acts or omissions.

10. Assignment. Clear Wireless may not assign this Agreement or transfer any of its rights under this Agreement without the City's prior written consent; provided that Clear Wireless may assign this Agreement to a parent, affiliate, subsidiary or purchaser of all or substantially all of Clear Wireless' assets upon prior written notice to City.

11. Antennas and Equipment. Clear Wireless' antennas and equipment shall remain personal to and the property of Clear Wireless. At the termination or expiration of this Agreement, Clear Wireless shall promptly remove its antennas and equipment, and repair any damage caused by such removal, and shall otherwise surrender the Property at the expiration of the Term, as same may have been extended, or the earlier termination thereof, in good condition, ordinary wear and tear, damage by fire and other casualty excepted.

12. Compliance with City Code. Clear Wireless shall comply with all terms, conditions, and requirements of the Code of the City of Hialeah, Florida as amended from time to time. In the event this Agreement or any terms and/or conditions therein conflict(s) with any provision(s) of the City's Code the City Code provision(s) shall control.

13. No Waiver. Nothing herein shall be construed as a waiver of any of the City's rights under the Prime Lease and any amendments thereto nor shall anything herein be construed as a modification of any of T-Mobile South LLC's obligations under the Prime Lease, the City Code or applicable federal and state law.

14. Approval by City Council. This Agreement shall not take effect until the City Council of the City of Hialeah, Florida approves it at a duly-noticed public hearing.

15. Miscellaneous.

a. This Agreement may be recorded in the Public Records of Miami Dade County; however, the original shall be maintained by the City Clerk as a public record of the City of Hialeah, Florida.

b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by the parties, and must bear the signature of the Mayor of the City of Hialeah, Florida.

c. There is ample and sufficient consideration to support each and every obligation of the Parties as set forth in this Agreement.

d. Each party hereto has had an opportunity to consult with and receive advice of legal counsel of their own selection prior to executing this Agreement, and this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

e. This Agreement shall be construed in accordance with the laws of the State of Florida. If any term or provision of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

f. The parties agree that the terms of this Agreement and the obligations of the parties pursuant thereto shall be specifically enforceable, and may be enforced by injunctive relief.

g. The venue for any litigation arising out of, as a result of, relating to, or pertaining to this Agreement or the performance thereof, shall be in the Circuit Court for the Eleventh Judicial Circuit, in and for Miami Dade County, Florida or in the United States District Court for the Southern District of Florida, whichever Court will entertain jurisdiction.

16. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the party to be notified may have designated to the other by notice delivered in accordance with this paragraph):

Owner: City of Hialeah, Florida
c/o City Attorney
501 Palm Avenue
Hialeah, Florida 33010 -4789

Clear Wireless Clear Wireless LLC
Attn: Site Leasing
4400 Carillon Point
Kirkland, Washington 98033

With copy to: Clear Wireless LLC
Attn: Legal Department
4400 Carillon Point
Kirkland, Washington 98033

Notice shall be effective upon mailing or delivering the same to a commercial courier, as permitted above.

[SIGNATURES ON NEXT PAGE]

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the date first written above.

City of Hialeah, Florida

Attest:

Rafael E. Granado
City Clerk

By: _____
Mayor Julio Robaina Date

Approved as to form and legal sufficiency:

William M. Grodnick
City Attorney

Witnesses

Name: _____

Name: _____

Clear Wireless LLC

By: _____

Its: _____
Title

T-Mobile South LLC is executing this Agreement in order to acknowledge the consent herein granted by the City of Hialeah, Florida to the Sublease with Clear Wireless for space on T-Mobile South LLC's tower and ground space within the Property for the purpose of establishing Clear Wireless' telecommunications facility at this site as required under the Ground Lease and all terms and conditions contained herein.

WITNESSES

T-Mobile South, LLC

Name: _____

Name: _____

By: _____
Name: _____
Its: Managing Member

Grodnick, William M.

To: dennis.czarnyszka@powderriverdev.com

Cc: Libby Lamb

Attachments: communicationtowercollocationagreementbrightparkclearwire.docx

Please review. I will be preparing an ordinance to present to the City Council for first reading on August 24, 2010. If Clearwire makes any revisions to the proposed "site plan", please let me know. Second reading and final adoption will be September 14th. Please confirm that you wish to proceed. Bill

8/9/2010



architects
engineers

Clear Wireless, LLC

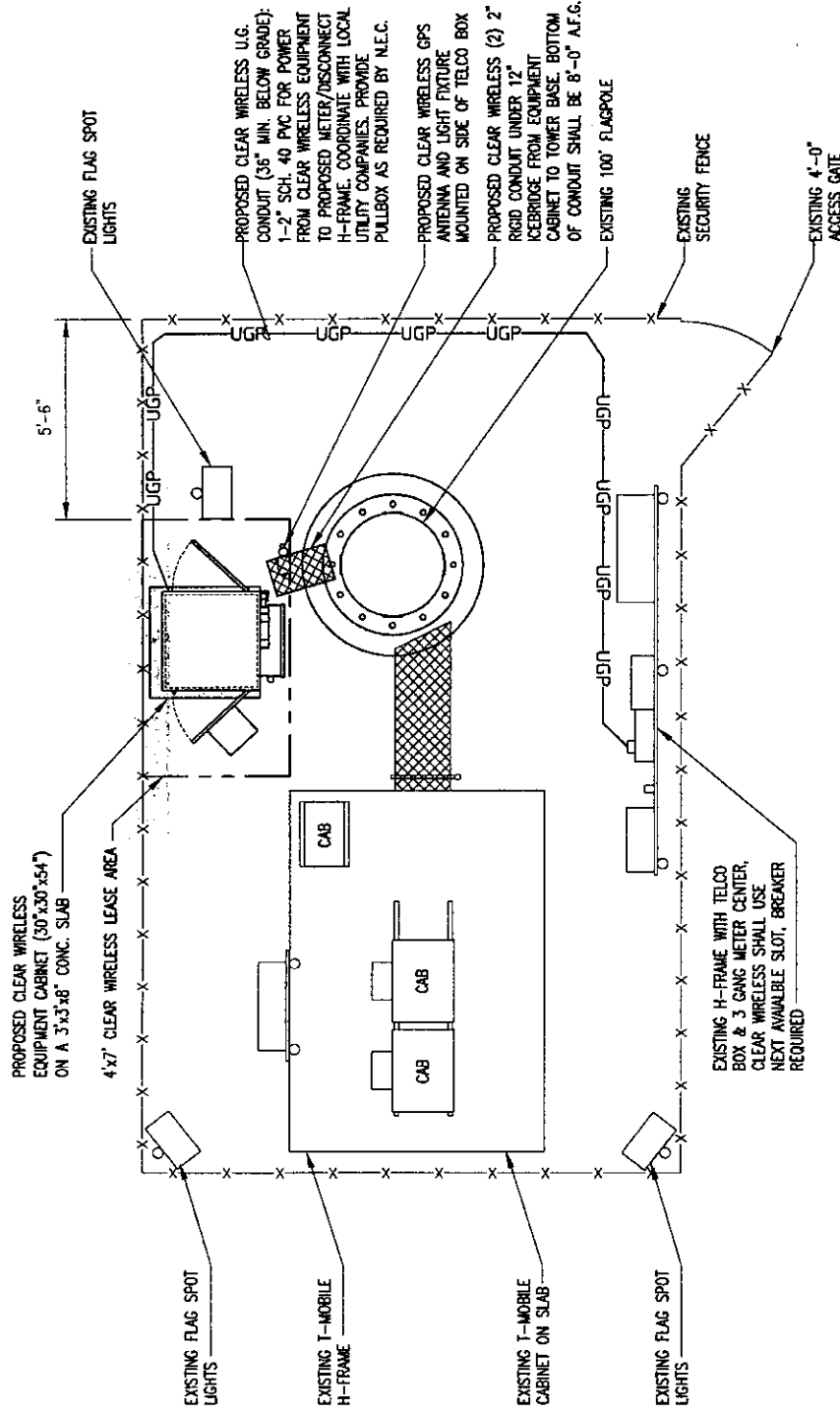
4400 CARLTON POINT
KINGLAND, WA 98033
TEL: (425) 216-7600
FAX: (425) 216-7900

PROPOSED
UNMANNED
WIRELESS
COMMUNICATION
SITE COLLOCATION

FL-MIA3120A

750 E. 35ST
HIALEAH, FL 33013

EXISTING T-MOBILE
SITE # 33013
SITE NAME -
GATE COMBO: 0600



SCALE IN FEET



1"=5'



TRUE NORTH

COMPOUND SITE PLAN

LEASE EXHIBIT

06-30-10 SHEET 1 OF 2 REV. 0

Clear Wireless, LLC

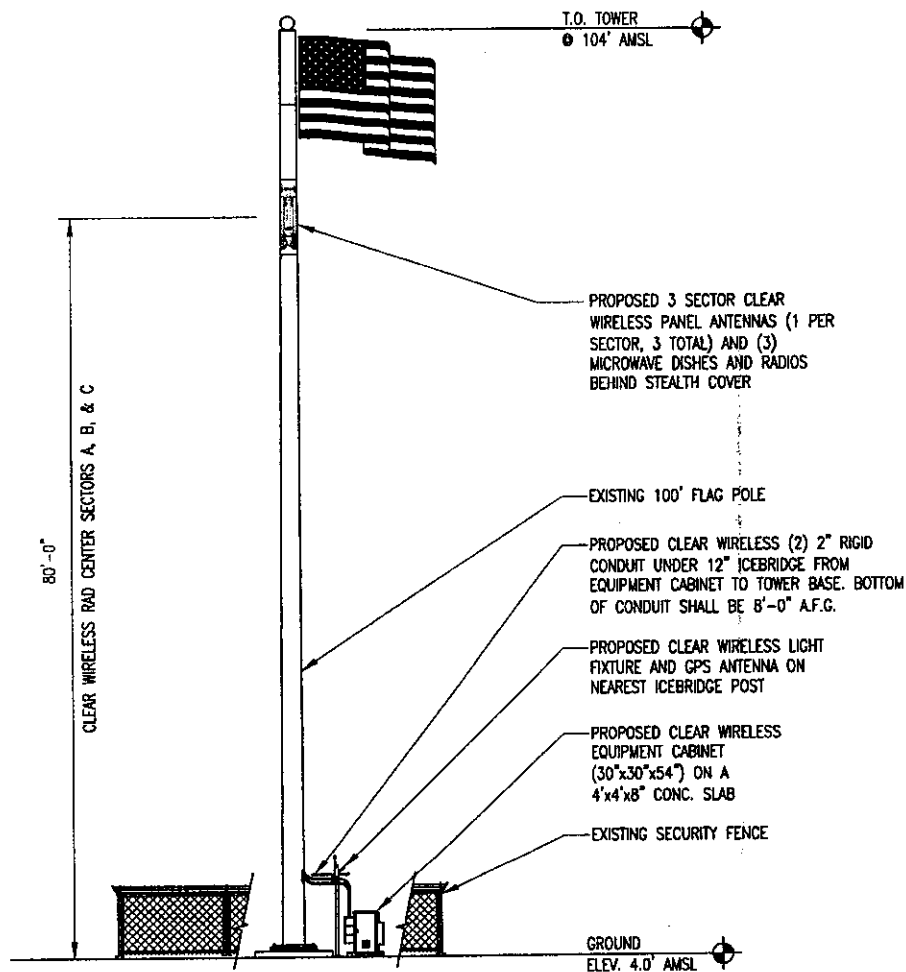
4400 CARILLON POINT
KIRKLAND, WA 98033
TEL: (425) 218-7600
FAX: (425) 218-7900

PROPOSED
UNMANNED
WIRELESS
COMMUNICATION
SITE COLLOCATION

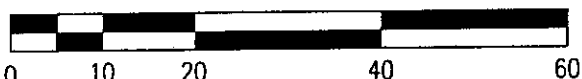
FL-MIA3120A

750 E. 35ST
HALEAH, FL 33013

EXISTING T-MOBILE
SITE #: 33013
SITE NAME: -
GATE COMBO: 0600



SCALE IN FEET



1"=20'

TOWER ELEVATION

03-29-10 SHEET 2 OF 2 REV. 0
Sheet Number

LEASE EXHIBIT



National Development – Tower Asset Management

4 Concourse Parkway, Suite 300
Atlanta, GA 30328

VIA 2nd Day Air and E-mail
WGrodnick@hialeahfl.gov

June 21, 2010

Attn: Rafael E. Granado, City Clerk
City of Hialeah, Florida
501 Palm Ave, 3rd Floor
Hialeah, FL 33010

RE: 6MD1322A / Bright Park
T-Mobile South LLC, Ground Lease
Located at 750 E 35th Street, Hialeah, FL

Dear Mr. Granado:

Pursuant to Paragraph 8(a) of the Ground Lease ("Lease") dated October 7, 2005, by and between City of Hialeah, Florida and T-Mobile South LLC, successor in interest to Omnipoint Holdings, Inc. ("T-Mobile"), T-Mobile hereby requests your written approval to sublease the premises to Clear Wireless LLC ("Sublessee").

The Sublessee will be bound by the terms and conditions of the Lease. Sublessee shall be required to obtain a separate ground lease with the City of Hialeah. Sublessee will be required to obtain any required building permits from the jurisdictions that govern the property.

Please indicate your acceptance in the space provided below and return one original of this letter to my attention in the enclosed envelope.

Thank you for your time in this matter. Please direct any questions to me in writing at the above address or at John.Hlava@T-Mobile.com.

Yours truly,

Jeff Hlava
Tower Asset Management, Southeast Region
T-Mobile South LLC

CC: Julio Robaina, Mayor, City of Hialeah, FL, 501 Palm Ave, 3rd Floor, Hialeah, FL 33010;
Bill Grodnick, City Attorney, City of Hialeah, FL, 501 Palm Ave, 3rd Floor, Hialeah, FL 33010

LANDLORD CONSENT:

In consideration of the terms, provisions, conditions, covenants, and agreements of that certain Ground Lease, by and between City of Hialeah, Florida and T-Mobile South LLC, Landlord hereby agrees and consents to the above sublease, including but not limited to the uses, rights-of-way and other rights and responsibilities granted to the Tenant.

City of Hialeah, Florida

By: _____ Date: _____
Signature (Print name if different from above)

SITE LICENSE AGREEMENT

This Site License Agreement ("SLA"), entered into this _____ day of _____, 20__ between T-Mobile South LLC, a Delaware limited liability company, hereinafter designated LICENSOR and Clear Wireless LLC, a Nevada limited liability company, hereinafter designated LICENSEE.

1. This SLA is a SLA as referenced in that certain Master License Agreement between T-MOBILE USA, INC. and CLEARWIRE US LLC, fka CLEARWIRE LLC, dated October 13, 2005, as amended by First Amendment to Master License Agreement dated March 19, 2007, and by Second Amendment to Master License Agreement dated July 16, 2009, and by Third Amendment to Master License Agreement dated October 1, 2009 ("MLA"). All of the terms and conditions of the MLA are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the MLA. In the event of a contradiction, modification or inconsistency between the terms of the MLA and this SLA, the terms of the MLA shall govern and control. Capitalized terms used in this SLA shall have the same meaning described for them in the MLA unless otherwise indicated herein.
2. Site No. and Name (if applicable): LICENSOR: 6MD1322A / Bright Park
LICENSEE: Clearwire id / clearwire name
3. Site Address and the Land which is more particularly described in Attachment 1, attached hereto and incorporated herein: address, address
4. Site Latitude and Longitude: deg° min' secs" Latitude / deg° min' secs" Longitude
5. The LICENSEE Antenna Facilities to be placed on the Property and the location of the Premises are detailed in and shall be consistent with Attachment 2, attached hereto and incorporated herein.
6. The term of this SLA shall be as set forth in Paragraphs 4 and 5 of the MLA, except: No exceptions.
7. Unless the parties have set forth a date for Rent commencement in the special provisions of this SLA, the Rent commencement date of this SLA shall be the first day of the month following the earlier of either: i) ninety (90) days after full execution of this SLA; or (ii) the date that LICENSOR issues a written "Notice to Proceed" (as such term is defined in Section 10(c) of the MLA) to LICENSEE permitting LICENSEE to commence construction.
8. The Rent for the initial term of this SLA shall be at an annual rental of Fifteen Thousand Three Hundred and 00/100 Dollars (\$15,300.00) to be paid in equal monthly installments of \$1,275.00 on the first day of the month, in advance, to LICENSOR at the following address: PO Box 70870, CM 9762, St Paul, MN 55170 or to such other person, firm or place as the LICENSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date. **All Rent checks shall have LICENSOR's site number clearly written on the face of the check.**
9. If the Property is subject to a prime lease, license or other such agreement affecting LICENSOR's interest of the Property, a copy of such agreement is attached hereto as Attachment 3. If consent is required from Owner, it shall be attached hereto and incorporated herein as Attachment 4.
10. LICENSOR Contact for Emergency: 877-611-5868
11. LICENSEE Contact for Emergency: 866-316-7575
12. Special Provisions: None.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year first above written.

LICENSOR:

T-Mobile South LLC

a Delaware limited liability company

WITNESS

BY: _____

PRINT NAME: Allan Tantillo

TITLE: Director, Tower Asset Management

DATE: _____

WITNESS

LICENSEE:

Clear Wireless LLC

a Nevada limited liability company

WITNESS

BY: _____

PRINT NAME: _____

TITLE: _____

DATE: _____

WITNESS

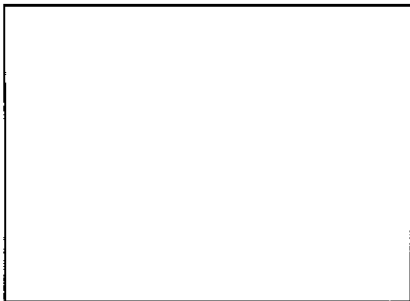
ATTACHMENTS:

- Attachment 1: Legal Description of the Land
- Attachment 2: Plans and Specifications
- Attachment 3: Prime Lease
- Attachment 4: Owner's Consent
- Attachment 5: Memorandum of SLA

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Allan Tantillo is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director, Tower Asset Management of T-Mobile South LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



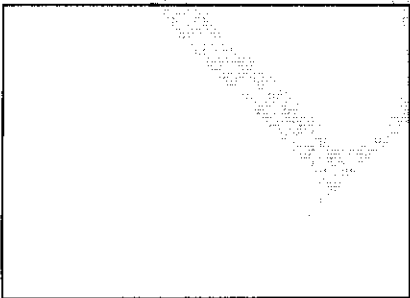
(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Clear Wireless LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

ATTACHMENT 1
LEGAL DESCRIPTION OF LAND

The Legal Description of Land is described as follows:

Legal Description of Land is attached hereto.

EXHIBIT A

LEGAL DESCRIPTION OF LAND

SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST
MIAMI-DADE COUNTY, FLORIDA

LEGAL DESCRIPTION: (PARENT TRACT AS FURNISHED)

THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ LESS THE EAST 50 FEET AND LESS NORTH 30 FEET AND LESS THE WEST 30 FEET SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST.

LEGAL DESCRIPTION: (PROPOSED T-MOBILE LEASE PARCEL)

A PORTION OF THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ LESS THE EAST 50 FEET AND LESS THE NORTH 30 FEET AND LESS THE WEST 30 FEET OF SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST. MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED TRACT OF LAND, THENCE RUN ALONG THE EASTERLY LINE OF THE ABOVE DESCRIBED TRACT OF LAND NORTH 1°17'05" EAST A DISTANCE OF 16.89 FEET; THENCE DEPARTING SAID EASTERLY LINE NORTH 89°55'03" WEST, A DISTANCE OF 5.74 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH 00°04'57" WEST, A DISTANCE OF 10.00 FEET; THENCE RUN NORTH 89°55'03" WEST, A DISTANCE OF 15.00 FEET; THENCE RUN NORTH 00°04'57" EAST, A DISTANCE OF 20.00 FEET; THENCE RUN SOUTH 89°55'03" EAST, A DISTANCE OF 15.00 FEET; THENCE RUN SOUTH 00°04'57" WEST, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 300.00 SQUARE FEET MORE OR LESS.

EXHIBIT B

LEGAL DESCRIPTION OF EASEMENT

SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST
MIAMI-DADE COUNTY, FLORIDA

LEGAL DESCRIPTION: (PROPOSED T-MOBILE INGRESS/EGRESS & UTILITY EASEMENT)

A PORTION OF THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$, LESS THE EAST 50 FEET AND LESS THE NORTH 30 FEET AND LESS THE WEST 30 FEET OF SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST. MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED TRACT OF LAND, THENCE RUN ALONG THE EASTERLY LINE OF THE ABOVE DESCRIBED TRACT OF LAND NORTH $1^{\circ}17'05''$ EAST A DISTANCE OF 16.89 FEET TO THE POINT OF BEGINNING OF A TWENTY FOOT (20') WIDE INGRESS/EGRESS & UTILITY EASEMENT, LYING 10 FEET EQUALLY ON EITHER SIDE OF THE FOLLOWING DESCRIBED CENTERLINE; THENCE DEPARTING SAID EASTERLY LINE NORTH $89^{\circ}55'03''$ WEST, A DISTANCE OF 5.74 FEET TO THE EASTERLY LINE OF THE PROPOSED T-MOBILE LEASE PARCEL, POINT ALSO BEING THE POINT OF TERMINATION OF SAID INGRESS/EGRESS & UTILITY EASEMENT. THE SIDELINES OF SAID EASEMENT ARE TO BE SHORTENED OR LENGTHENED TO FORM ONE CONTIGUOUS SHAPE.

CONTAINING 114.9 SQUARE FEET MORE OR LESS.

ATTACHMENT 2

PLANS AND SPECIFICATIONS

(including description of the antenna location, and location of ground equipment on the ground portion of the Premises)

Proposed Equipment is defined below and plans and specifications are attached hereto.

Number of Antennas:	Three (3) mounted on pipe mounts
Antenna Manufacturer and Type-Number:	Powerwave P65-18-XXW2-2
Weight and Dimension of Antenna(s) (L x W x D):	32lbs., 48" x 13" x 3"
Location of Antenna(s) on Tower (Approved RAD Center):	75'
Direction of Antenna Radiation (Azimuth):	0 / 120 / 240
Number of Wireless Base Station(s) ("BTS"):	Three (3)
BTS Manufacturer and Type-Number:	Samsung RAS SPI-2213 RRH
Weight and Dimension of BTS (L x W x D):	33lbs., 16.14" x 11.61" x 6"
Number of MW Dish:	Three (3) mounted on pipe mounts
MW Dish Manufacturer and Type-Number(s):	Andrew VHL P2-18-1WH
Weight and Diameter of MW Dish:	35 lbs.; 2'
Location of MW Dish on Tower (Approved RAD Center):	79'
Direction of MW Dish Radiation (Azimuth):	0 / 120 / 240
Number of Radio Modems:	Three (3)
Radio Modems Manufacturer and Type/Number:	Dragonwave AirPair
Weight and Dimension of Radio Modems (L x W x D):	11.5 lbs., 9.3" x 9.3" x 4.75"
Number of Coax/Transmission Lines:	Nine (9)
Coax/Transmission Line routing:	Internal
Diameter and Length of Transmission Line:	Diameter: Six (6) 5/16"; Three (3) 1/2", Length: 140'+/-
Coax/Transmission Line Mfr. and Type No.:	Clearcomm RG-11 / Andrew LDF4-50A
Dimensions of LICENSEE Ground Space:	Separate Ground Lease with Prime Landlord
Frequencies/Max. Power Output:	Tx: 2496 - 2690 MHz Rx: 2496 - 2690 MHz 450 Watts
Additional Equipment to be placed on tower: (incl. make, model, weight & dimensions)	NONE N/A N/A N/A

Notes:

1. The plans and specifications attached hereto are provided as SLA attachments only. Approved Final Construction drawings are required prior to commencement of construction. Actual "as built" drawings shall be attached and incorporated herein at the time of completion of construction.
2. This Attachment is to include any plans for routing lines, utility wires, etc. on or across the Property.

**ATTACHMENT 3
PRIME LEASE**

The Prime Lease is attached hereto.



Ground Lease

THIS Lease ("Lease") entered into as of this 2nd day of October, 2005, by and between the City of Hialeah, Florida, a Florida municipal corporation ("Landlord"), 501 Palm Avenue, Hialeah, Florida and Omnipoint Holdings, Inc., a Delaware corporation, with its principal office located at 12920 S.E. 38th Street, Bellevue, Washington 98006 ("Tenant").

Recitals

A. Landlord is the owner in fee simple of a parcel of land located in the City of Hialeah, Miami-Dade County, Florida, whose legal description is set forth on the attached Exhibit A.

B. Tenant is in the wireless cellular communications business and desires to lease the site described below from Landlord and to construct and/or replace on such site a 100 - foot high monopole tower camouflaged in the shape of a flagpole for use in connection with such business ("Tower").

C. Accordingly, the parties are entering into this Lease on the terms and conditions set forth below.

In consideration of the mutual covenants contained in this Lease, the parties agree as follows:

1. Leased Site. Landlord leases to Tenant and Tenant leases from Landlord the real property legally described on the attached Exhibit A (the "Land") together with a non-exclusive easement for ingress, egress and utilities over the adjacent real property legally described on the attached Exhibit B (the "Access Easement"). The Land and the Access Easement are collectively referred to as the "Site."

2. Sublease to Landlord. The parties contemplate Landlord using the Tower free of charge for a radio repeater and tornado siren ("Landlord's Communications Equipment") and Tenant coordinating with Landlord (and any subcontractor of Landlord) the installation of Landlord's Communication Equipment on the Tower.

3. Relocation. Notwithstanding any provision in this Lease to the contrary, Landlord shall have the right, at any time (and from time to time) during the term of this Lease, to relocate the Tower, at Landlord's expense, to another location suitable for Tenant's use.

4. Term.

a. This Lease shall commence on the earlier of the date that Tenant secures all necessary local and government permits to commence its construction or 60 days

from the date of this Lease (the Commencement Date") and shall terminate at midnight on the last day of the fifth (5th) anniversary of the Commencement Date (the "Initial Term"). Upon expiration of the Initial Term, this Lease may be renewed for 2 additional terms of 5 years each (each a "Renewal Term"), upon agreement of the parties and acceptance by the City of Hialeah by ordinance, and in such case, Rent during the Renewal Terms will increase in accordance with Section 5.c, below.

b. Landlord may terminate this Lease at any time, by providing 180 days written notice to Tenant, following the proposal or adoption by the State or Federal government of a law, rule, regulation or decision to the effect that due (in whole or in part) to a landlord having entered into a lease such as this one, the landlord is required to allow additional antennas or towers (of any sort or description) on its property. The rule proposed by the Federal Communications Commission in 1999 in WT Docket 99-217 and CC Docket 96-98 (if applicable to cellular type towers or antennas) would be such a rule. In addition to the foregoing right to terminate this Lease, Landlord has the right, without any further liability, to terminate all of Tenant's right to the Site upon not less than sixty (60) days prior written notice to Tenant if:

(1) Landlord is prohibited by any governmental entity from continued use of the Site during the term of this Lease; or

(2) Landlord's right to control or occupy the Site is terminated due to causes beyond its control.

5. Rent.

a. Tenant shall pay Landlord as rent for the Site each year during the term of this Lease the sum of [REDACTED] ("Base Rent"). Tenant shall pay Base Rent for the first year on the Commencement Date, and Tenant shall pay Landlord Base Rent annually in advance on or before each anniversary of the Commencement Date. Base Rent shall be increased each year as described hereafter.

b. Tenant shall pay Landlord a late payment charge equal to [REDACTED] of the amount past due for any rent payment not paid within 5 days of the due date.

c. The Base Rent shall be increased annually effective as of each anniversary of the Commencement Date by an amount equal to five percent (5%).

d. If this Lease is terminated at a time other than on the last day of the month, Rent shall be prorated as of the date of termination and, in the event of termination

for any reason other than Tenant's default, all prepaid Rents shall be refunded to the Tenant.

- e. Base Rent, Additional Rent and all other consideration to be paid or provided by Tenant to Landlord shall constitute "Rent" hereunder and shall be paid or provided without offset.

6. Use of Site. Tenant shall use the Site for the construction and operation of the Tower and the placement and operation thereon of "personal wireless service facilities" as such is defined in §704 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), partially codified at 47 U.S.C. § 332(c)(7)(C)(2), and Landlord's Communication Equipment and for no other purpose. Tenant shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the use, operation, maintenance, construction and/or installation of the Site.

7. Tenant Improvements, Plans, Bonds.

a. (1) Tenant may improve the Site by constructing the Tower and any related ancillary support facilities and structures on the Site. Prior to commencing construction, Tenant shall submit plans and specifications for all improvements to Landlord for Landlord's written approval, such approval not to be unreasonably withheld. No improvement, construction, installation or alteration shall be commenced until plans for such work has been approved by the Landlord and all necessary permits have been properly issued.

(2) Such plans shall include: Fully dimensioned site plans that are drawn to scale and show (i) the proposed location of the antennas, equipment shelter, driveway and parking areas, (ii) the proposed changes in the landscape, (iii) the proposed type and height of fencing, (iv) the proposed color of all structures, including fencing, (v) the proposed type of construction material for all structures, including fencing, and any other details that the Landlord may request.

(3) Prior to commencing construction, Tenant shall also provide Landlord with the name of the contractor that will be constructing the improvements. The contractor is subject to the prior written approval of Landlord, such approval not to be unreasonably withheld. All improvements shall be constructed in a workmanlike manner without the attachment of any liens to the Site and shall be completed in compliance with all applicable laws, rules, ordinances and regulations.

(4) No improvements or modifications to the Tower shall be made without the Landlord's consent. Moreover, any such improvements or modifications are subject to the conditions set forth in paragraph a. (1), (2) and (3) above.

(5) Landlord acknowledges that the Tower will function as a flagpole. At its sole cost and expense, Landlord shall purchase the flag to be flown on the Tower and perform all maintenance, repair and replacement of the flag, including any raising and lowering of the flag. All maintenance and repair to the pulleys, lines, lights and any and all related equipment necessary for the flag's operation shall be performed by Tenant at its sole cost and expense. Both parties agree that no equipment shall be allowed to interfere with the flying of the flag on the Tower. Notwithstanding anything to the contrary herein, Tenant shall purchase the first flag to be flown from the Tower, and Landlord shall purchase any replacement flags, and the dimensions of the flag shall be subject to Landlord's prior written approval, not to be unreasonably withheld, conditioned or delayed.

b. (1) The Tower shall remain the property of Tenant and Tenant shall, at Landlord's request, remove the Tower upon termination of the Lease. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the Site, including use of the Site by Landlord or any of Landlord's assignees or lessees. If, however, Tenant requests permission not to remove all or a portion of the improvements, and Landlord consents to such non-removal, title to the affected improvements shall thereupon transfer to Landlord and the same thereafter shall be the sole and entire property of Landlord, and Tenant shall be relieved of its duty to otherwise remove same. All other alterations, improvements and structures located or constructed on the Site (except for movable equipment and trade fixtures), shall become the property of Landlord upon termination of the Lease, except that Landlord may, by written notice to Tenant, require Tenant to remove all such improvements upon termination of the Lease. Any personal property, equipment or other improvements which are not removed prior to the termination of this Lease shall become the property of Landlord, at Landlord's option.

(2) Upon removal of the improvements (or portions thereof) as provided above in subpart (1), Tenant shall restore the affected area of the Site to the reasonable satisfaction of Landlord.

(3) All costs and expenses for the removal and restoration to be performed by Tenant pursuant to subparts (1) and (2) above shall be borne by Tenant, and Tenant shall hold Landlord harmless from any portion thereof.

c. Tenant shall, prior to commencing any construction on the Site, post a payment bond in form and with a surety company reasonably acceptable to Landlord, assuring that the improvements will be constructed without the attachment of any construction liens.

d. Tenant shall annually post a bond (or, at Tenant's option, a letter of credit) from a surety or bank reasonably acceptable to Landlord, and in an amount reasonably deemed necessary by Landlord, to assure that the funds will be available at the termination of the Lease for removal of the Tower.

e. Tenant shall keep the Site free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Tenant. If any lien is filed against the Site as a result of acts or omission of Tenant or Tenant's employees, agents or contractors, Tenant shall discharge the lien or bond the lien off in a manner reasonably satisfactory to Landlord within ninety (90) days after Tenant receives written notice that the lien has been filed.

8. Use by Landlord and Other Providers.

a. With Landlord's written consent, Tenant may allow another person or entity to use the Tower for purposes of collocation, provided Tenant notifies the third party that such collocation is subject to such person or entity obtaining a ground lease with Landlord. In the event of such collocation, Landlord shall be entitled to all ground rents and Tenant shall be entitled to all Tower rents.

b. Tenant shall design and construct the Tower to accommodate at least one other telecommunications providers ("Other Providers"). Toward this end, Tenant shall design and construct the Tower to permit co-location. Tenant shall also design and construct all ancillary support facilities, including any support buildings, so that at least one other provider will have an adequate amount of space to house their own support equipment.

c. Tenant shall cooperate with each new Other Provider in connection with their locating and placing their antennas and other facilities on the Tower and in the ancillary support facilities. If the location and placement can not be agreed to after a good faith effort has been made, Landlord shall make a final resolution and plan that binds both Tenant and the Other Provider; provided, however, that in no event shall Landlord have the right to require Tenant to relocate Tenant's equipment on the Tower of site to accommodate the Other Provider.

d. Each new Other Provider shall be solely responsible for the cost of locating and placing their equipment onto the Tower and into the ancillary support facilities, including any support buildings. The Other Providers shall also be

responsible for any liabilities that arise from the Other Provider's use of the Tower.

e. Landlord shall be allowed to conduct an interference study indicating whether Tenant's or an Other Provider's use of the Towers will interfere with Landlord's proposed use of the Tower. In the event that such a study indicates that Tenant's or Other Provider's use will potentially interfere with Landlord's proposed use of the Tower, Landlord may require Tenant, at Tenant's expense, to take reasonable steps to relocate Tenant's antenna and other equipment so as to remove or minimize the interference, to the extent Landlord reasonably deems necessary.

9. Net Lease. Landlord shall not be required to make any expenditures of any kind in connection with this Lease or to make any repairs or improvements to the Site. The parties agree that this is a net lease intended to assure Landlord the rent reserved on an absolute net basis. In addition to the Rent reserved above, Tenant shall pay to the parties entitled thereto all taxes, assessments, insurance premiums, maintenance charges, and any other charges, costs and expenses against the Site that may be contemplated under any provisions of this Lease.

10. Maintenance. Tenant shall, at its own expense, maintain the Site and all improvements, equipment and other personal property on the Site in good working order, condition and repair. Tenant shall keep the Site free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.

11. Access. Landlord and its agents shall have the right to enter the Site at reasonable times to examine and inspect the Site. Tenant, its employees, agents and contractors shall have 24-hours-a-day, 7 days-a-week access to the Site at all times during the Initial Term of this Lease and any Renewal Term.

12. Utilities. Tenant shall be responsible for obtaining any utility service to the Site that it desires. Tenant shall pay when due all charges for utilities to the Site during the term of the Lease.

13. License Fees. Tenant shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Tenant's use of the Site.

14. Governmental Approvals. This Lease is contingent upon Tenant's obtaining all necessary governmental approvals, permits or licenses that Tenant may deem necessary. This contingency shall be deemed waived 30 days after the date of this Lease unless Tenant provides Landlord written notice within the 30 day period that it is terminating the

Lease in light of its inability to obtain necessary approvals. Tenant's installation, operation and maintenance of its transmission facilities shall not interfere with the Landlord's public safety communications system.

15. Default and Landlord's Remedies. It shall be a default (i) if Tenant defaults in the payment or provision of Rent or any other sums to Landlord when due, and does not cure such default within 10 business days after Tenant receives written notice of such default from the Landlord; or (ii) if Tenant defaults in the performance of any other covenant or condition of this Lease and does not cure such other default within thirty (30) days after written notice from Landlord specifying the default complained of; provided, however, that Tenant will not be in non-monetary default hereunder if it commences and completes curing any such non-monetary default within such 30-day period if such non-monetary default can be reasonably cured within the 30-day period, and, provided, further, that if such non-monetary default cannot be reasonably cured within the 30-day period, the parties may agree to a reasonable time extension, not to exceed 90 days, within which Tenant must complete the cure of such non-monetary default, or (iii) if Tenant abandons or vacates the Site; or (iv) if Tenant is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or (v) if Tenant becomes insolvent. If Tenant fails to cure any such default within the applicable notice and cure period, Landlord shall have the right to terminate this Lease immediately upon written notice to Tenant, retain any prepaid Rent, and pursue any other remedies available to Landlord at law or in equity.

In the event of a default, Landlord shall have the right, at its option, in addition to and not exclusive of any other remedy Landlord may have by operation of law, without any further demand or notice, to re-enter the Site and eject all persons therefrom, and either (a) declare this Lease at an end, in which event Tenant shall immediately remove the Tower (and proceed as set forth in Section 5b) and pay Landlord a sum of money equal to the total of (i) the amount of the unpaid rent accrued through the date of termination; (ii) the amount by which the unpaid rent reserved for the balance of the then-current term exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or (b) without terminating this Lease, relet the Site, or any part thereof, for the account of Tenant upon such terms and conditions as Landlord may deem advisable, and any monies received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due Landlord hereunder for the balance of the then-current term, and if a sufficient sum shall not be thus realized to pay such sums and other charges, Tenant shall pay Landlord any deficiency monthly, notwithstanding that Landlord may have received rental in excess of the rental stipulated in this Lease in previous or subsequent months, and Landlord may bring an action therefor as such monthly deficiency shall arise.

No re-entry and taking of possession of the Site by Landlord shall be construed as an election on Landlord's part to terminate this Lease, regardless of the extent of renovations and alterations by Landlord, unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

If suit shall be successfully brought by Landlord for recovery of possession of the Site, for the recovery of any Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant, the Tenant shall pay to the Landlord all expenses incurred therefore, including reasonable attorney fees.

16. Cure by Landlord. In the event of any default of this Lease by Tenant, the Landlord may at any time, after notice, cure the default for the account of and at the expense of the Tenant. If Landlord is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce the Landlord's rights under this Lease, the sums so paid by Landlord, with all interest, costs and damages shall be deemed to be Rent otherwise due and shall be added to the Rent and shall be due from the Tenant to Landlord on the first day of the month following the incurring of the respective expenses.

17. Damage or Destruction. If the Tower or any portion of the tower is destroyed or damaged so as to materially hinder effective use of the Tower through no fault or negligence of Tenant, Tenant may elect to terminate this Lease upon thirty (30) days' written notice to Landlord. In such event, Tenant shall promptly remove the Tower from the Site and the parties shall proceed as set forth in Section 7b above. This Lease (and Tenant's obligation to pay Rent) shall terminate upon Tenant's fulfillment of the obligations set forth in the preceding sentence, at which termination Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. Landlord shall have no obligation to repair any damage to any portion of the Site.

18. Condemnation. In the event the Site is taken by eminent domain, this Lease shall terminate as of the date title to the Site vests in the condemning authority. In the event a portion of the Site is taken by eminent domain so as to materially hinder effective use of the Site by Tenant, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the reward paid for the taking and the Landlord shall receive full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Site, shall belong to Landlord. Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any

and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property, and leasehold improvements.

19. Indemnity and Insurance.

a. Disclaimer of Liability: Landlord shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant's construction, maintenance, repair, use, operation, condition or dismantling of the Tower or Site.

b. Indemnification: Tenant shall, at its sole cost and expense, indemnify and hold harmless Landlord and all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors, elected or appointed (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys incurred at the administrative or trial level or on appeal, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Tenant, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Site or the Tenant's failure to comply with any federal, state or local statute, ordinance or regulation.

ii. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys incurred at the administrative or trial level or on appeal, expert witnesses and other consultants), except for claims arising from the gross negligence or intentional acts of Indemnitees, which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Tenant, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Tower or Site and, upon the written request of Landlord, Tenant shall cause such claim or lien covering Landlord's property to be discharged or bonded in accordance with Section 7(e).

iii. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys incurred at the administrative or trial level and on appeal, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any financing or securities offering by Tenant or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of Florida or United States, including those of the Federal Securities and Exchange Commission, whether by Tenant or otherwise.

c. Assumption of Risk: Tenant undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees (collectively "Tenant" for the purpose of this Section), all risk of dangerous conditions, if any, on or about the Site, and Tenant hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitee's gross negligence) arising out of the Tenant's installation, operation, maintenance, condition or use of the Site or Tenant's failure to comply with any federal, state or local statute, ordinance or regulation.

d. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Tenant shall, upon notice from any of the Indemnitees, at Tenant's sole cost and expense, resist and defend the same with legal counsel mutually selected by Tenant and Landlord (unless such counsel is selected by Tenant's insurer, in which case neither Landlord nor Tenant will have any role in or approval rights over such selection); provided however, that Tenant shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of Landlord and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Tenant.

e. Notice, Cooperation and Expenses: Landlord shall give Tenant prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 19. Nothing herein shall be deemed to prevent Landlord from cooperating with Tenant and participating in the defense of any litigation by Landlord's own counsel. Tenant shall pay all expenses incurred by Landlord in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by the Landlord's attorney, and the actual expenses of Landlord's agents, employees or expert witnesses, and disbursements and liabilities assumed by Landlord in connection with such suits, actions or proceedings but shall not

include attorneys' fees for services that are unnecessarily duplicative of services provided Landlord by Tenant.

If Tenant requests Landlord to assist it in such defense then Tenant shall pay all expenses incurred by Landlord in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the costs of any services rendered by the Landlord's attorney, and the actual expenses of Landlord's agents, employees or expert witnesses, and disbursements and liabilities assumed by Landlord in connection with such suits, actions or proceedings.

f. Insurance: During the term of the Lease, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

- i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Million Dollars (\$1,000,000) for each accident.
- ii. Comprehensive commercial general liability insurance with minimum limits of Seven Million Dollars (\$7,000,000) as the combined single limit for each occurrence of bodily injury, personal injury, death and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.
- iii. Pollution Legal Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Million Dollars (\$5,000,000).
- iv. Automobile liability insurance covering all owned, hired, and nonowned vehicles in use by Tenant, its employees and agents, affording coverage for bodily injury and property damage coverage to comply with the provisions of state law with minimum limits of Two Million Dollars (\$2,000,000) as the combined single limit for each occurrence for bodily injury and property damage.
- v. At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the

Tower. Upon completion of the installation of the Tower, Tenant shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Site. The amount of insurance at all times shall be representative of the insurable values of Tenant's property and equipment installed or constructed at the Site.

vi. Business interruption insurance coverage in an amount sufficient to cover such loss of revenues, for the period of time which it would take, under normal circumstances, to repair or replace that part(s) of the Site that is damaged and caused the loss of revenue.

vii. All policies other than those for Worker's Compensation and pollution legal liability shall be written on an occurrence and not on a claims made basis.

viii. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

g. Named Insureds: All policies, except for builder's risk, property, business interruption and worker's compensation and pollution legal liability policies, shall name Landlord and all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

h. Evidence of Insurance: Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this paragraph, of required premiums shall be filed and maintained with Landlord annually during the term of the Lease. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

i. Cancellation of Policies of Insurance: Tenant agrees to give Landlord thirty (30) days prior written notice of the cancellation or non-renewal of all insurance policies maintained pursuant to this Lease.

j. Insurance Companies: All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Florida or surplus line carriers on the State of Florida Insurance Commissioner's approved list of companies qualified to do business in the State of Florida. All insurance carriers and surplus line carriers shall be rated A-- or better by A.M. Best Company.

k. Deductibles: All insurance policies may be written with deductibles and retainages, and the Tenant agrees to indemnify the City for all deductibles. Tenant agrees to indemnify and save harmless Landlord, the Indemnitees and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by Tenant under this Lease.

l. Contractors: Tenant shall require that each and every one of its contractors and their subcontractors who perform work on the Site to carry, in full force and effect, workers' compensation, comprehensive public liability and automobile liability insurance coverages of the type and in the amounts which Tenant is required to obtain under the terms of this Lease.

m. Review of Limits: Once during each calendar year during the term of this Lease, Landlord may review the insurance coverages to be carried by Tenant. If Landlord reasonably determines that higher limits of coverage are necessary to protect the interests of Landlord or the Additional Insureds, Tenant shall be so notified and shall obtain the additional limits of insurance, at its sole cost and expense.

20. Hazardous Substance Indemnification. Except as provided by law, Tenant represents and warrants that its use of the Site herein will not generate any hazardous substance, and it will not store or dispose on the Site nor transport to or over the Site any hazardous substance. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such hazardous substance and any damage, loss, or expense or liability resulting from such release including all reasonable attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of Landlord, its employees, contractors or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

21. Holding Over. Any holding over after the expiration of the term hereof, with the consent of the Landlord, shall be construed to be a tenancy from month to month at [REDACTED] (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

22. Subordination to Mortgage. Any mortgage or deed of trust now or subsequently placed upon any property of which the Site are a part shall be deemed to be prior in time and senior to the rights of the Tenant under this Lease. Tenant subordinates all of its interest in the leasehold estate created by this Lease to the lien of any such mortgage or deed of trust. Tenant shall, at Landlord's request, execute any additional reasonable documents necessary to indicate this subordination; provided, however, that the holder of any such mortgage or deed of trust must agree in writing that so long as Tenant is not in default under this Lease beyond any applicable grace or cure period, Tenant's use and quiet enjoyment of the Site will not be disturbed before or after foreclosure by anyone claiming by, through or under such holder.

23. Security Deposit. Contemporaneously with the execution of this Lease, Tenant has deposited with the Landlord a payment bond in the sum of [REDACTED]. The deposit shall be held by the Landlord, without liability for interest, as security for the faithful performance by the Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by the Tenant during the term hereof.

24. Acceptance of Site. By taking possession of the Site, Tenant accepts the Site in the condition existing as of the Commencement Date. Landlord makes no representation or warranty with respect to the condition of the Site and Landlord shall not be liable for any latent or patent defect in the Site.

25. Estoppel Certificate. Tenant shall, at any time and from time to time upon not less than ten (10) days prior request by Landlord, deliver to Landlord a statement in writing certifying that (a) the Lease is unmodified and in full force (or if there have been modifications, that the Lease is in full force as modified and identifying the modifications); (b) the dates to which rent and other charges have been paid; (c) so far as the person making the certificate knows, Landlord is not in default under any provisions of the Lease; and (d) such other matters as Landlord may reasonably request.

26. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to Landlord, to: Rafael E. Granado , Acting City Clerk
City of Hialeah
501 Palm Avenue, 3rd Floor
Hialeah, Florida 333010
With a copy to the Mayor at same address

With a copy to: Law Department
City of Hialeah
501 Palm Avenue, 4th Floor
Hialeah, FL 33010

If to Tenant, to: Omnipoint Holdings, Inc.
c/o T-Mobile
3111 W. Dr. Martin Luther King Drive
Suite 400
Tampa, Florida 33607
Attn.: Cell Site Lease Administrator

With a copy to: T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Cell Site Administrator
With a copy to: Attn: Legal Department

27. Assignment and Subletting.

(a) Subject to the provisions of Section 7, Tenant shall not assign this Lease in whole or in part, or sublet all or any part of the Site without the Landlord's prior written consent, such consent not be unreasonably withheld or delayed. Consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. If this Lease is assigned, or if the Site or any part thereof is sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant and apply the net amount collected to the rent and other obligations of Tenant hereunder reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver or release of Tenant from the further performance by Tenant of the covenants on the part of Tenant hereunder contained. Notwithstanding any assignment or sublease, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.

(b) Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to assign this Lease without Landlord's consent to any parent or subsidiary of Tenant, or subsidiary or affiliate of Tenant's parent, or any party that merges or consolidates with Tenant or its parent, or any party that purchases or otherwise acquires all or substantially all of Tenant's stock or assets.

(c) Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Sections 101, et seq., shall be deemed without further act to have assumed all of the obligations of Tenant arising under this

Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Landlord, shall be the exclusive property of Landlord, and shall not constitute property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid to Landlord.

28. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

29. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Lease or to exercise any of its rights hereunder shall not waive such rights, but such party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Tenant to Landlord after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

30. Optional Termination. Landlord shall have at its sole discretion the option of terminating this Lease if Tenant loses its license to provide PCS/cellular services for any reason, including, but not limited to, non-renewal, cancellation, or expiration of its license. Notwithstanding, any other termination rights available to Tenant under this Lease, Tenant, may terminate this Lease within 90 days prior written notice to Landlord, if, in Tenant's reasonable judgment, the Site cannot be used for the purpose described in Section 6 hereof due to radio frequency transmission and reception issues related to (i) other radio frequency sources, (ii) engineering or network design issues or (iii) physical changes in the buildings and improvements in the vicinity of the Site following the Commencement Date.

31. Taxes.

a. Tenant shall pay all real and personal property taxes (or payments in lieu of taxes) and assessments for the Site, if any, which become due and payable during the term of this Lease. All such payments shall be made, and evidence of all such payments shall be provided to Landlord, at least ten (10) days prior to the delinquency date of the payment. Tenant shall pay all taxes on its personal property on the Site.

b. Tenant shall indemnify Landlord from any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys incurred at the administrative or trial level and on appeal, expert witnesses and consultants),

which may be imposed upon, incurred by or be asserted against Tenant in relation to the taxes owed or assessed on the Site.

c. If the methods of taxation in effect at the Commencement Date of the Lease are altered so that in lieu of or as a substitute for any portion of the property taxes and special assessments now imposed on property there is imposed a tax upon or against the rentals payable by Tenant to Landlord, Tenant shall pay those amounts in the same manner as provided for the payment of real and personal property taxes.

32. Dispute Resolution.

a. Except as otherwise provided in this Lease, any controversy between the parties arising out of this Lease or breach thereof, is subject to the mediation process described below.

b. A meeting will be held promptly between the parties to attempt in good faith to negotiate a resolution of the dispute. Individuals with decision making authority will attend the meeting regarding the dispute. If within twenty (20) days after such meeting the parties have not succeeded in resolving the dispute, they will, within twenty (20) days thereafter submit the dispute to a mutually acceptable third party mediator who is acquainted with dispute resolution methods. Landlord and Tenant will participate in good faith in the mediation and in the mediation process. The mediation shall be nonbinding. Neither party is entitled to seek or recover punitive damages in considering or fixing any award under these proceedings.

c. The costs of mediation, including any mediator's fees, and costs for the use of the facilities during the meetings, shall be born equally by the parties. Each party's costs and expenses will be assumed by the party incurring them.

33. Treatment in Bankruptcy. The parties to this Lease hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the term of this Lease Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. § 101, et seq. (the "Code"), this Lease is and shall be treated as an "unexpired lease of nonresidential real property" for purposes of Section 365 of the Code, 11 U.S.C. § 365, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365.

34. Force Majeure. If a party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrections, war, terrorism, acts of God or other reasons of like nature, not the fault of

the party delayed in performing work or doing acts, such party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay. In the event that Tenant invokes this provision because damage to the Site has hindered, delayed, or prevented Tenant from using the Site, Tenant may immediately erect any temporary facilities on the Site necessary to resume service, provided that such temporary facilities do not unreasonably interfere with Landlord's ability to repair or restore the Site or interfere with the Landlord's public safety communications system. If, in Landlord's sole and absolute discretion, it elects to repair or restore the Site, upon completion of such repair or restoration, Tenant is entitled to repair or rebuild the Tower and/or related facility in accordance with the terms agreed upon in this Lease.

35. Miscellaneous.

- a. This Lease is not a franchise pursuant to state law or Hialeah Code nor is it a permit to use the rights-of-way under state law or Hialeah Code. Any such franchise or permit must be obtained separately from Landlord.
- b. Landlord and Tenant each represent and warrant to the other that all necessary authorizations and approvals required for execution and performance of this Lease have been given and that the undersigned individual is duly authorized to execute this Lease and bind the party for which it signs.
- c. This Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.
- d. This Lease and performance hereunder shall be governed, interpreted, construed and regulated by the laws of the State of Florida. Venue for any litigation that may arise in connection with this Agreement shall be in Miami-Dade County, Florida. The Tenant agrees to be subject to the jurisdiction (subject matter and in personam) of the courts of Miami-Dade County, Florida and amenable to service of process.
- e. If any term, covenant, condition or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.
- f. Landlord hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose associated with the Site. Tenant accepts the Site "As Is."

g. Tenant shall use the utmost good faith to apply for, obtain, and keep in full force and effect all certificates, permits, licenses, and approvals affecting Tenant's ability to use the Site.

h. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

i. This Lease does not and shall not be construed to establish or create a partnership, joint venture, franchise or other form of business association between Landlord and Tenant.

j. Landlord covenants and agrees that so long as Tenant is not in default under this Lease beyond any applicable grace or cure period, Tenant's use and quiet enjoyment of the Site will not be disturbed by anyone claiming by, through and under Landlord.

This Lease was executed as of the date first set forth above.

LANDLORD:

CITY OF HIALEAH, FLORIDA

By: [Signature] 8-24-05
Mayor Raul L. Martinez Date

Attest:

By: [Signature]
Rafael E. Granado, Acting City Clerk

Approved as to legal sufficiency and form:

William Grodnick
William M. Grodnick, City Attorney

TENANT:

OMNIPOINT HOLDINGS, INC.

By: [Signature]
Title: Dir Eng & Ops

[Signature]
WITNESS: Kazuma Sasaki
[Signature]
WITNESS: SIGTI QJEN

EXHIBIT A

LEGAL DESCRIPTION OF LAND

SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST
MIAMI-DADE COUNTY, FLORIDA

LEGAL DESCRIPTION: (PARENT TRACT AS FURNISHED)

THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$, LESS THE EAST 50 FEET AND LESS NORTH 30 FEET AND LESS THE WEST 30 FEET SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST.

LEGAL DESCRIPTION: (PROPOSED T-MOBILE LEASE PARCEL)

A PORTION OF THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$, LESS THE EAST 50 FEET AND LESS THE NORTH 30 FEET AND LESS THE WEST 30 FEET OF SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST. MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED TRACT OF LAND, THENCE RUN ALONG THE EASTERLY LINE OF THE ABOVE DESCRIBED TRACT OF LAND NORTH $1^{\circ}17'05''$ EAST A DISTANCE OF 16.89 FEET; THENCE DEPARTING SAID EASTERLY LINE NORTH $89^{\circ}55'03''$ WEST, A DISTANCE OF 5.74 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH $00^{\circ}04'57''$ WEST, A DISTANCE OF 10.00 FEET; THENCE RUN NORTH $89^{\circ}55'03''$ WEST, A DISTANCE OF 15.00 FEET; THENCE RUN NORTH $00^{\circ}04'57''$ EAST, A DISTANCE OF 20.00 FEET; THENCE RUN SOUTH $89^{\circ}55'03''$ EAST, A DISTANCE OF 15.00 FEET; THENCE RUN SOUTH $00^{\circ}04'57''$ WEST, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 300.00 SQUARE FEET MORE OR LESS.

EXHIBIT B

LEGAL DESCRIPTION OF EASEMENT

SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST
MIAMI-DADE COUNTY, FLORIDA

LEGAL DESCRIPTION: (PROPOSED T-MOBILE INGRESS/EGRESS & UTILITY EASEMENT)

A PORTION OF THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ LESS THE EAST 50 FEET AND LESS THE NORTH 30 FEET AND LESS THE WEST 30 FEET OF SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST. MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED TRACT OF LAND, THENCE RUN ALONG THE EASTERLY LINE OF THE ABOVE DESCRIBED TRACT OF LAND NORTH $1^{\circ}17'05''$ EAST A DISTANCE OF 16.89 FEET TO THE POINT OF BEGINNING OF A TWENTY FOOT (20') WIDE INGRESS/EGRESS & UTILITY EASEMENT, LYING 10 FEET EQUALLY ON EITHER SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: THENCE DEPARTING SAID EASTERLY LINE NORTH $89^{\circ}55'03''$ WEST, A DISTANCE OF 5.74 FEET TO THE EASTERLY LINE OF THE PROPOSED T-MOBILE LEASE PARCEL, POINT ALSO BEING THE POINT OF TERMINATION OF SAID INGRESS/EGRESS & UTILITY EASEMENT. THE SIDELINES OF SAID EASEMENT ARE TO BE SHORTENED OR LENGTHENED TO FORM ONE CONTIGUOUS SHAPE.

CONTAINING 114.9 SQUARE FEET MORE OR LESS.

**ATTACHMENT 4
OWNER'S CONSENT**

Owner's Consent is attached hereto if required under the Prime Lease.

Owner's Consent will be inserted upon receipt

National Development – Tower Asset Management

4 Concourse Parkway, Suite 300
Atlanta, GA 30328

DRAFT

VIA 2nd Day Air and E-mail
wgodnick@hialeahfl.gov

June 21, 2010

Attn: Rafael E. Granado, City Clerk
City of Hialeah, Florida
501 Palm Ave, 3rd Floor
Hialeah, FL 33010

**RE: 6MD1322A / Bright Park
T-Mobile South LLC, Ground Lease
Located at 750 E 35th Street, Hialeah, FL**

Dear Mr. Granado:

Pursuant to Paragraph 8(a) of the Ground Lease ("Lease") dated October 7, 2005, by and between City of Hialeah, Florida and T-Mobile South LLC, successor in interest to Omnipoint Holdings, Inc. ("T-Mobile"), T-Mobile hereby requests your written approval to sublease the premises to Clear Wireless LLC ("Sublessee").

The Sublessee will be bound by the terms and conditions of the Lease. Sublessee shall be required to obtain a separate ground lease with the City of Hialeah. Sublessee will be required to obtain any required building permits from the jurisdictions that govern the property.

Please indicate your acceptance in the space provided below and return one original of this letter to my attention in the enclosed envelope.

Thank you for your time in this matter. Please direct any questions to me in writing at the above address or at John.Hlava@T-Mobile.com.

Yours truly,



Jeff Hlava
Tower Asset Management, Southeast Region
T-Mobile South LLC

CC: Julio Robaina, Mayor, City of Hialeah, FL, 501 Palm Ave, 3rd Floor, Hialeah, FL 33010;
Bill Grodnick, City Attorney, City of Hialeah, FL, 501 Palm Ave, 3rd Floor, Hialeah, FL 33010

LANDLORD CONSENT:

In consideration of the terms, provisions, conditions, covenants, and agreements of that certain Ground Lease, by and between City of Hialeah, Florida and T-Mobile South LLC, Landlord hereby agrees and consents to the above sublease, including but not limited to the uses, rights-of-way and other rights and responsibilities granted to the Tenant.

City of Hialeah, Florida

DRAFT

NOT APPROVED

By: _____

Signature

Date: _____

(Print name if different from above)

ATTACHMENT 5

MEMORANDUM OF LICENSE

This Memorandum of Site License Agreement is entered into on this ____ day of _____, 20__ ("SLA Effective Date"), by and between T-Mobile South LLC, a Delaware limited liability company, with an office at 12920 SE 38th Street, Bellevue, WA 98006 (hereinafter referred to as "LICENSOR") and Clear Wireless LLC, a Nevada limited liability company, with an office at 4400 Carillon Point, Kirkland, WA 98033 (hereinafter referred to as "LICENSEE").

1. LICENSOR and LICENSEE entered into a Site License Agreement ("SLA") on the ____ day of _____, 200__, for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Site License Agreement.
2. The term of the SLA is for five (5) years commencing on _____, 20__ and ending on _____, with four (4) successive five (5) year options to renew. If all options to renew are exercised, the term of this SLA will expire twenty-five (25) years after the SLA Effective Date (as defined in the SLA).
3. The Land is described in Attachment 1 annexed hereto.
4. The original copy of this SLA is held at the LICENSOR's and LICENSEE's addresses set forth above.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Site License Agreement as of the day and year first above written.

LICENSOR:
T-Mobile South LLC
a Delaware limited liability company

LICENSEE:
Clear Wireless LLC
a Nevada limited liability company

By: _____
(Signature)
Allan Tantillo
(Print)

Title: Director, Tower Asset Management

Date: _____

By: _____
(Signature)

(Print)

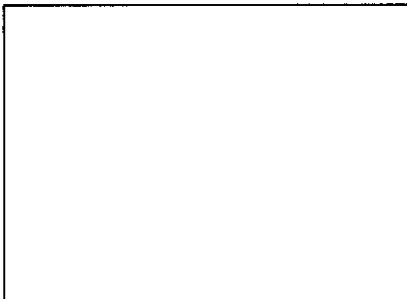
Title: _____

Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Allan Tantillo is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director, Tower Asset Management of T-Mobile South LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Clear Wireless LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

MEMORANDUM OF LICENSE
ATTACHMENT 1
LEGAL DESCRIPTION OF LAND

The Legal Description of Land is described as follows:

Legal Description of Land is attached hereto.

EXHIBIT A

LEGAL DESCRIPTION OF LAND

SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST
MIAMI-DADE COUNTY, FLORIDA

LEGAL DESCRIPTION: (PARENT TRACT AS FURNISHED)

THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ LESS THE EAST 50 FEET AND LESS NORTH 30 FEET AND LESS THE WEST 30 FEET SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST.

LEGAL DESCRIPTION: (PROPOSED T-MOBILE LEASE PARCEL)

A PORTION OF THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ LESS THE EAST 50 FEET AND LESS THE NORTH 30 FEET AND LESS THE WEST 30 FEET OF SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST. MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED TRACT OF LAND, THENCE RUN ALONG THE EASTERLY LINE OF THE ABOVE DESCRIBED TRACT OF LAND NORTH $1^{\circ}17'05''$ EAST A DISTANCE OF 16.89 FEET; THENCE DEPARTING SAID EASTERLY LINE NORTH $89^{\circ}55'03''$ WEST, A DISTANCE OF 5.74 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH $00^{\circ}04'57''$ WEST, A DISTANCE OF 10.00 FEET; THENCE RUN NORTH $89^{\circ}55'03''$ WEST, A DISTANCE OF 15.00 FEET; THENCE RUN NORTH $00^{\circ}04'57''$ EAST, A DISTANCE OF 20.00 FEET; THENCE RUN SOUTH $89^{\circ}55'03''$ EAST, A DISTANCE OF 15.00 FEET; THENCE RUN SOUTH $00^{\circ}04'57''$ WEST, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 300.00 SQUARE FEET MORE OR LESS.

EXHIBIT B

LEGAL DESCRIPTION OF EASEMENT

SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST
MIAMI-DADE COUNTY, FLORIDA

LEGAL DESCRIPTION: (PROPOSED T-MOBILE INGRESS/EGRESS & UTILITY EASEMENT)

A PORTION OF THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ LESS THE EAST 30 FEET AND LESS THE NORTH 30 FEET AND LESS THE WEST 30 FEET OF SECTION 5, TOWNSHIP 53 SOUTH, RANGE 41 EAST. MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED TRACT OF LAND, THENCE RUN ALONG THE EASTERLY LINE OF THE ABOVE DESCRIBED TRACT OF LAND NORTH $1^{\circ}17'05''$ EAST A DISTANCE OF 16.89 FEET TO THE POINT OF BEGINNING OF A TWENTY FOOT (20') WIDE INGRESS/EGRESS & UTILITY EASEMENT, LYING 10 FEET EQUALLY ON EITHER SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: THENCE DEPARTING SAID EASTERLY LINE NORTH $89^{\circ}55'03''$ WEST, A DISTANCE OF 5.74 FEET TO THE EASTERLY LINE OF THE PROPOSED T-MOBILE LEASE PARCEL, POINT ALSO BEING THE POINT OF TERMINATION OF SAID INGRESS/EGRESS & UTILITY EASEMENT. THE SIDELINES OF SAID EASEMENT ARE TO BE SHORTENED OR LENGTHENED TO FORM ONE CONTIGUOUS SHAPE.

CONTAINING 114.9 SQUARE FEET MORE OR LESS.

ORDINANCE NO. 05-74

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A GROUND LEASE WITH OMNIPOINT HOLDINGS, INC., A DELAWARE CORPORATION, TO LEASE A SITE LOCATED AT BRIGHT PARK, 750 EAST 35 STREET, HIALEAH, FLORIDA IN ORDER TO CONSTRUCT A WIRELESS COMMUNICATIONS FACILITY ON A 100-FOOT HIGH MONOPOLE TOWER CAMOUFLAGED IN THE SHAPE OF A FLAG POLE FOR A TERM OF FIVE YEARS, BEGINNING FROM THE COMMENCEMENT DATE OF THE LEASE TERM AND ENDING FIVE YEARS THEREAFTER, WITH TWO CONSECUTIVE RENEWAL TERMS OF FIVE YEARS, EACH SUBJECT TO APPROVAL BY THE CITY, FOR A BASE ANNUAL RENT OF \$30,000, WITH AN ANNUAL INCREASE OF 5% EACH YEAR, TOGETHER WITH SUCH RIGHTS AND DUTIES AS MORE FULLY DESCRIBED IN THE GROUND LEASE, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; AND GRANTING A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES IN CONNECTION WITH THE CONSTRUCTION AND OPERATION OF THE COMMUNICATIONS TOWER; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is in the best interest of the City to allow for the use of wireless communication towers on public property and obtain revenue through a ground lease.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into a ground lease with Omnipoint Holdings, Inc., a Delaware corporation, to lease a site located at Bright Park, 750 East 35 Street, Hialeah, Florida, in order to construct a wireless communication facility on a 100-foot high monopole tower camouflaged in the shape of a flag pole, beginning from the commencement date of the lease term and ending five years thereafter, with two consecutive renewal terms of five years, each subject to approval by the City, for a base annual rent of \$30,000, with an annual increase of 5% each year, together with such rights and duties as more fully described in the ground lease, a copy of which is attached hereto and made a part hereof as Exhibit "1".

Section 2: The City of Hialeah, Florida hereby grants a non-exclusive easement for ingress, egress and utilities in connection with the construction and operation of the communications tower.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty

described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

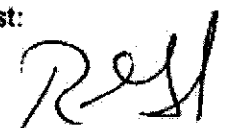
PASSED and ADOPTED this 23rd day of August, 2005.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Julio Robaina
Council President

Attest:

Approved on this 24th day of AUGUST, 2005.


Daniel F. DeLoach, City Clerk


Mayor Raul L. Martinez

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

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Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Casas, Gonzalez, Miel, Robaina, Sicre and Yedra voting "Yes."